When a government agency takes action that causes poles to be relocated, attaching parties are likely to refuse to pay a proportion of the cost. They could justify such refusal based on the current rule by claiming that they neither initiated the request nor specifically benefitted from such modifications. GTE submits that the current rule arguably requires all attaching parties to share costs because the relocation does "specifically benefit" the requesting telecommunications carrier by allowing the carrier to maintain its attachment and continue its service. Nevertheless, in order to preclude unnecessary debate about the meaning of the Commission's rules, GTE supports Duquesne's request that the Commission clarify its cost sharing rules for modifications initiated by a government agency.

### D. The Commission Does Not Have The Authority To Mandate That A Utility Use Its Eminent Domain Authority On Behalf Of Attaching Entities.

The *First Interconnection Order* held that "a utility should be expected to exercise its eminent domain authority to expand an existing right-of-way over private property in order to accommodate a request for access, just as it would be required to modify its poles or conduits to permit attachments."[117] The petitions filed by the Consolidated Edison Company of New York, Inc., the Delmarva Power & Light Company, the Duquesne Light Company, and the Edison Electric Institute urge the Commission to reconsider this decision.

[117] *Id.* at ¶ 1181.

A utility is precluded under many state laws from using its eminent domain powers on behalf of third parties.[118] Moreover, neither the 1996 Act nor the Conference Report authorizes the FCC to require utilities to exercise their eminent domain powers in specific ways. The FCC has not articulated any statutory policy that would justify its preemption of state law in this area,[119] and therefore has no authority to do so.[120] Because the FCC may not compel the use of state eminent domain powers on behalf of third parties, GTE supports the petitioners' request on this issue.

### E. Notice Regarding Modification To Pole Attachments Should Be Given Only One To Two Weeks Before Any Modification Is Made, Not 60 Days.

The Commission adopted a requirement that if a written agreement establishing a notice period for parties does not exist, then "written notification of a modification must be provided to parties . . . at least 60 days prior to the commencement of the

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[118] *See, e.g.,* Con Edison Petition at 6.

[119] The FCC cryptically states that "Congress seems to have contemplated the exercise of eminent domain authority" in Section 224(h). *First Interconnection Order* at ¶ 1181. However, Section 224(h) says nothing about exercising eminent domain powers, and certainly does not even hint that the FCC could force their use. Rather, the cited provision only requires that a utility provide the attaching parties with notice of pole, duct, conduit, or right-of-way modifications.

[120] *See, e.g.*, California v. ARC America Corporation, 490 U.S. 93, 100-01 (1989) ("state law is . . . pre-empted to the extent it actually conflicts with federal law, that is, when compliance with both state and federal law is *impossible*" and there is a "presumption against finding pre-emption of state law in areas traditionally regulated by the States")(emphasis added).

physical modification itself."[121] The Commission, however, does permit notice of modification "as soon as reasonably practicable" in an emergency situation.

As explained by Con Edison, notice to an attaching party within one to two weeks prior to making modifications to poles or conduits is more than ample. Scheduling changes, manpower shortages, and budget constraints make a 60-day notice period unnecessarily cumbersome. Parties are far better equipped to work out these details on a negotiated basis. What is more, the 60-day notice provision violates Section 224's reliance on negotiated agreements to determine the terms and conditions of attachment agreements. The FCC's announcement of a 60-day period is tantamount to establishing a minimum reasonable notice period, because no party will be willing to negotiate for less than 60-days' notice after such a policy has been announced. Accordingly, GTE agrees with Con Edison that the Commission should eliminate the 60-day default notice requirement.

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[121] *First Interconnection Order* at ¶ 1209.

## VII. THE COMMISSION SHOULD RECONSIDER ITS DETERMINATION THAT LECS MUST COMPENSATE ONE-WAY PAGING PROVIDERS

Kalida Telephone Company ("Kalida") has asked the Commission to reconsider the requirement that LECs pay one-way paging terminating compensation for pages that originate on a LEC's network. GTE concurs with Kalida that such compensation is contrary to rational economic and policy considerations. Thus, GTE respectfully urges reconsideration of compensation requirements for one-way paging.

Section 251(b)(5) establishes *reciprocal compensation arrangements* between LECs and competitive providers for the transport and termination of telecommunications. One-way paging carriers, including narrowband PCS, ("one-way paging") is clearly different than other CMRS services because there is no reciprocal traffic. In considering the issue of symmetry in the *First Interconnection Order*, the Commission recognized that "[p]aging is typically a significantly different service than wireline or wireless service. . . ."[122]

The most significant difference is that messaging services today are generally one-way non-interactive communications. One-way paging service does not compete with local exchange service nor is it intended to supplant basic two-way interactive voice telephone services.[123] Paging terminals do not perform true end office

[122] The Commission then declined to use the ILEC's costs for termination of traffic as a proxy for the cost of the paging carrier. *Id.* at ¶ 1092.

[123] Even those narrowband messaging services being introduced are not two-way interactive communications. These services, consisting of two one-way communications, do not replicate or replace a subscriber's local business or residential phone service. *See* PageNet Reply Comments, CC Docket No. 96-98 (May 30, 1996).

switching functions, as do LECs and two-way CMRS providers. An end office switch selectively routes traffic according to the called number, while a paging terminal cannot selectively route traffic according to the called number. The terminating call is completed at the paging switch and is not routed to the paging end user. Moreover, the paging end user cannot originate any calls. Because of these differences, the compensation mechanism between LECs and one-way paging carriers should differ from other LEC-CMRS or LEC-CLEC arrangements.

The Commission reasoned in the *First Interconnection Order* that the reciprocal compensation arrangements required by Section 251(b)(5) "should benefit all carriers . . . because it will facilitate competitive entry into new markets while ensuring reasonable compensation for the additional costs incurred in terminating traffic that originates on other carriers' networks."[124] However, with one-way paging, this is not the case. LECs will not be compensated by the paging carrier. Nor, as stated by Kalida, will the LEC be able to recover additional revenue from the end user paying a flat-rate local service charge.

As Kalida explains, by requiring LECs to pay paging carriers to terminate their pages, the *First Interconnection Order* creates irrational economic results. The LEC is required to compensate the paging carrier to terminate a page originating by a LEC customer. Because the one-way paging carrier has no reciprocal traffic to terminate on the LEC network, the paging carrier would pay nothing to the LEC. In effect, LECs

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[124] *First Interconnection Order* at ¶ 1045.

could be paying for the one-way paging carrier's entire paging network. These paging carriers could give away pagers and simply reap all their compensation from the LEC for delivering the pages to their network. GTE agrees with Kalida and urges the Commission to require the cost of a one-way paging network to be borne by the cost causer, the paging customer, and not the LECs or their customers.

## VIII. CONCLUSION

For the foregoing reasons, the FCC should reject the petitions for reconsideration filed by CLECs and grant the petitions filed by the electric utilities.

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I hereby certify that on this 31st day of October, 1996, I caused copies of the foregoing "Opposition and Comments of GTE" to be mailed via first-class postage prepaid mail to the following:

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# APPENDIX A

NARUC

# Universal Service

## Existing Proxy Models

## What can they be used for?

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September 1996

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# CHAPTER 0

# UNIVERSAL SERVICE THE EARLY HISTORY

## Background to Universal Service Prior To 1996 Communications Act

The topic of universal service continues to be subject to numerous papers, seminars, industry meetings, regulatory and legislative activities, including numerous Federal State Joint Board and Federal Communications Commission (FCC) proceedings. In 1981, the FCC was proposed to implement a flat rate interstate charge on local customers which would have raised local rates a minimum of $8 per month. In response to this proposal the state of Michigan filed a petition with the FCC stating that it believed Universal Service would be at risk if the FCC were to shift all the loop cost from interstate carriers to the local customers. National Association of Regulatory Utility Commissioners (NARUC) supported the petition, however Illinois Commerce Commission did not support the position that interexchange carriers should pay some portion of the cost for the local loop.

To address the issue of universal service the Joint Board in FCC Docket 80-286 established a transition mechanism and the existing central office equipment dial equipment minutes of use (DEM) weighting, high cost fund, lifeline programs and the Link up Program to mitigate the various shifts in revenue from the interstate jurisdiction to the state jurisdiction. The Joint Board/FCC orders adopted in 1983 (Subscriber Line Charge (SLC) Order in CC Docket 80-286 & 78-72) and 1987 ( Uniform System of Accounts (USOA) Part 32 Conformance Order and SLC increase) which shifted more that $8 billion dollars to the states or the local rate payers. That shift in jurisdictional revenue requirement caused the intrastate local or toll rates to increase and interstate long distance rates to go down. The changes were phased in over a period which ended in 1992.

At the completion of the phase in of the separations changes and shift of revenue requirements to the states, NARUC passed a resolution (July 25, 1990) stating that there was a need for comprehensive review of the jurisdictional cost allocation (separation process) process including the universal service mechanisms (high cost fund, dial equipment minutes of use weighting and circuit equipment allocators). In the mean time the Joint Board identified the universal service fund as one of the issues that should be looked at. NARUC also established a work group in July, 1993 to study universal service and issued a report in July 1994.

The Universal Service Fund (USF) program was identified as a "short term" issue at the March 2, 1992 Joint Board meeting on Comprehensive Review. Questions have been raised about USF growth and targeting which could lead to an evaluation of how the fund is working. In response to this situation, the USF Industry Task Force developed and distributed a USF Discussion Paper on May 6, 1992.

The USF Industry Task Force was chaired by NECA and is made up of representatives from small and large exchange carriers, consultants, and other national associations including NTCA, OPASTCO, and USTA. Statistics presented in the paper indicate that the current USF mechanism, which conforms to FCC rules, is experiencing expected growth in fund size and is properly targeted.

The FCC released a Staff Paper in August, 1993 that called for the continued preservation of universal service. The Federal/State Joint Board and the FCC addressed the current size of the Universal Service Fund (USF) by establishing a indexed cap on the Universal Service Fund in 1993.

As a result of the interim cap, NECA filed revised rates on January 14, 1994, to be effective February 1, 1994 - June 30, 1994. The Universal Service Fund size using the indexed cap resulted in payments of $725.3M for 1994 versus an amount of $744M submitted to the FCC in October 1994.

On May 17, 1994 NECA submitted to the FCC its report of presubscribed lines for IXCs qualified as USF payers. These data were filed in conjunction with NECA's USF/LA Filing to revise Lifeline Assistance and Universal Service Fund charges billed to IXCs. This filing sets those charges at $.0901 and $.4295 per line, respectively, effective July 1, 1994 through December 31, 1994. This represents a net decrease per subscriber line per month of $.0053 from the combined rates then in effect.

On September 30, 1994, NECA submitted results of its 1994 USF Data Collection to the FCC. This report contained results of exchange carrier loop costs for the period ending December 31, 1993 and established high cost company expense adjustment levels for calendar year 1995. With the interim cap on growth for the high cost fund still in effect for 1995, the total fund size was increased to $749.2 million (1994 fund size increased by 3.28 percent to reflect growth in lines). Absent the cap, funding would have been $777.4 million, an increase of 4.8

percent over the prior year's uncapped level.

Numerous other interested entities including MCI, MFS, Teleport, AT&T, SWBT, USTA, NARUC have published papers regarding universal service issues. Internet on line discussions of this issue are also going on at the Benton Foundation and the University of Pittsburgh. In October 1994 the Telephone Industry Analysis Project (TIAP) reported out the paper Beyond Cost Allocations: Benchmark Subsidy Method. The purported purpose of this Project was to provide information to support the development of alternative telecommunications policies to meet the needs of stakeholders in an environment that includes competitive and non-competitive markets, federal and state regulatory jurisdictions, and to produce research and analysis which will assist policy makers in making informed decisions. The TIAP is affiliated with the Public Research Center, College of Business Administration, University of Florida. Prior to 1993, the project was known as the Alternative Costing Methods Project. Private industry provided funding has continue to support the project from year to year.

On November 17, 1994, NECA submitted revised USF ($0.4335 per presubscribed line per month) and Lifeline Assistance ($0.0848 per presubscribed line per month) rates to the Commission to be in effect for the period January 1, 1995 through June 30, 1995. These changes, permitted to become effective January 1, reduced the combined charge to the qualified interexchange carriers by $0.0013 per presubscribed line per month.

NECA submitted its semiannual revision to USF and Lifeline Assistance charges on May 17, 1995, to be effective for the period July 1, 1995 through December 31, 1995. The proposed changes in rates of $0.4214 for USF and $0.0936 for Lifeline Assistance would further reduce the composite charge to the interexchange carriers by $0.0033 per subscriber line per month.

On August 30, 1994 the FCC issued a Notice of Inquiry (NOI) regarding High Cost Assistance. Comments were submitted on October 28, 1994 and reply comments on December 2, 1994.

Approximately 150 parties filed in this docket, with a wide variety of viewpoints represented. There was general agreement that:

1) A comprehensive review of all universal service issues, including implicit support, is needed;

2) The definition of universal service should not be expanded; and,

3) All providers should contribute to universal service support.

However, there were areas of disagreement. For example:

While small local exchange carriers (LECs) believe the current USF works well and requires no fundamental change, interexchange carriers (IXCs) felt that the USF was too large, and

Some parties felt that Price Cap/Tier 1 LECs should be ineligible for high cost support, while others believe that all providers should be eligible.

In the August 30, 1994, NOI of the FCC also sought comment on the effectiveness and efficiency of the USF and DEM mechanisms, and the manner in which Part 36 rules are used to provide interstate assistance to LECs. Comments were due October 28, 1994 and replies on December 2, 1994.

More than, 144 parties filed comments in this proceeding. Generally, the regional bell operating companies (RBOCs) argued that the proceeding was too limited and needs to address the much larger issues of maintaining universal service in a competitive environment. They therefore recommended that the FCC initiate a comprehensive proceeding to investigate all funding mechanisms. The IXCs argued that the growth in high-cost assistance is excessive, and should be controlled through more targeted approaches. They and competitive access providers (CAPs) supported the concept of a voucher system. Many small LECs and state regulators presented "successes" of the USF, noting that policy is working. They also maintained that support should be determined on the basis of actual costs.

On December 1, 1994, the FCC issued a mandatory Universal Service Fund data request in Docket 80-286 to all telephone companies that provide telephone exchange service. The purpose of the data request is stated to be to "enable the Commission, State regulatory agencies, LECs, IXCs, and other interested parties to estimate the financial effects on various assistance mechanisms". Depending on certain qualifications, the completed Files 1 through 4 of the data request are due to the FCC on February 1, 1995 and/or March 1, 1995.

On July 13, 1995, the FCC released a Notice of Proposed Rulemaking (NPRM) and NOI proposing revisions to the FCC Part 36 jurisdictional separations rules regarding high cost assistance mechanisms. Specifically, the FCC requested comment on several alternatives for revising DEM weighting and USF rules, including such ideas as modification of current rules and thresholds, combining the current programs, instituting a proxy factor system, and issuance of high cost credits. The primary focus of the alternatives was to reduce the amount of high cost support provided via DEM weighting and USF mechanisms. Restructuring Universal Service support to address the larger issue of the amount of the current implicit support flows embedded in LEC rates, which are subject to erosion by competitive forces, was not addressed in that docket.

Approximately 175 parties filed comments, which were due October 12, 1995, in this proceeding. Reply comments are due on November 12, 1995.

Approximately 50 parties filed reply comments on November 10, 1995. Subsequent to that, several parties have filed ex partes containing data analyses in support of their positions on the NPRM issues regarding the USF, DEM weighting, proxies, benchmarks, etc.. It was during the context of these ex parte presentations that the joint sponsors of the first bench mark pricing model filed that model with the FCC and Joint Board.

On December 8, 1995, the Docket 80-286 Joint Board issued a Recommended Decision to extend the interim cap on USF an additional 6 months until July 1, 1996 which was accepted by the FCC on December 12, 1995.

Many parties agreed that a reworking of the current Part 36 support mechanisms, upon which the July 1995 NOI was based, is a commendable undertaking. However, most LECs, competitive access providers, and IXCs called for a more comprehensive review of universal service issues. Some other more predominant comments made were:

> States commented that they want to play a major role in administering the support funds (other parties were less enthusiastic about State distribution of the funds). Some States disagreed, however, on the use and appropriateness of proxies and high cost credits.
>
> IXCs, competitive access providers, and cable TV providers generally argued for the elimination of DEM weighting and large cuts in USF support. LECs generally argued the opposite.
>
> LECs were split on the use of proxies.

On February 8, 1996 the President signed into law the Communications Act of 1996. This act changed the course of universal service activities. The FCC on March 8, 1996 released and NPRM on universal service and established a new Joint Board in Docket 96-45 to review the universal service issues under the new act.

Most of the papers and party positions regarding universal service, including those included in the works cited here in, have been posted on the Energy and Regulatory Matters Information Service (ERMIS) Bulletin Board (517-882-0021 or telnet ermis.state.mi.us) managed by the staff at the Michigan Public Service Commission.

# CHAPTER 1

# UNIVERSAL SERVICE CURRENT EVENTS

## The Events Post 1996 Federal Communications Act

On February 8, 1996 the President signed into law the Communications Act of 1996. This act changed the course of universal service activities.

Section 254(a)(1) of the Communications Act, as amended, requires the Commission to "institute and refer to a Federal-State Joint Board under section 410 (c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and [Section 254], including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations."

The FCC on March 8, 1996 released and NPRM on universal service and established a new Joint Board in Docket 96-45 to review the universal service issues under the new act.

The Joint Board in CC Docket 80-286 and now in 96-45 have compiled a extensive record of parties concerns on how universal service should be funded. Various options have been put forward for determining what should be funded. Some of those options are: actual cost (% of cost over a specified amount), vouchers customers, models (Bench Mark Cost Model 1 (BCM1), Bench Mark Cost Model 2 (BCM2), Hatfield Model (Hatfield) and Cost Proxy Model (CPM)), and customer discounts (lifeline 1, lifeline 2 and linkup).

The March 8, 1996 NPRM states the FCC's initiative to 1) define the services that will be supported by Federal universal service support mechanisms, 2) define those support mechanisms, 3) otherwise recommend changes to current regulations to implement the universal service directives in the 1996 Act.

The NPRM set forth seven principles enunciated in Section 254(b) of the 1996 Act for establishing a mechanisms for collecting and distributing funding essential to achieve the universal service goals. The goals identified were:

1. the concept of "quality services" utility of performance-based measurements to evaluate our success in reaching that Congressional objective to ensure that quality service be available at "just, reasonable, and affordable rates";

2. foster access to advanced telecommunications and information services for "all regions of the Nation;

3. consumers in "rural, insular, and high-cost areas" and "low-income consumers" should have access to "telecommunications and information services" that are "reasonably comparable to those services provided in urban areas." In light of the further legislative intent to "accelerate rapidly private sector deployment of advanced services to all Americans;

4. support mechanisms for universal service and should guide efforts to establish those mechanisms through which funding essential to realizing the universal service goals will be collected and distributed. This calls for "equitable and non-discriminatory contributions: from "all providers of telecommunications services";

5. "support mechanisms should " be "specific, predictable and sufficient";

6. "elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services; and

7. Section 254 of the new legislation authorizes the FCC and the Federal-State Joint Board to base universal service policies on "[s]uch other principles as [they] determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act."

The NPRM also asked which services should be supported, how to implement explicit support mechanisms, how to determine affordability, how to calculate the "subsidy", the use of cost proxy models, the appropriateness of DEM weighting rules, how to define service areas, and specific recommendations for low-income customer support - including toll limitation services, Lifeline and Link Up America programs. Comments were submitted on April 12, 1996 and reply comments May 7,1996. It was in response to this portion of the NPRM that proponents of the BCM and later the Hatfield Model proposed that these models be used as a substitute for book cost in order to determine eligibility and amount of support provided for universal service under section 254 of the 1996 Communications Act.

Approximately 250 parties provided Comments to the NPRM in the following areas: (1) goals and principles of universal support mechanisms, (2) support for rural, insular, and high-cost areas and low-income consumers, (3) support for schools, libraries, and health care providers, (4) enhancing access to advanced services for schools, libraries, and health care providers, (5) other universal service mechanisms, and (6) administration of support mechanisms. Although most of the parties agreed on the need for universal service support these was no clear cut solution to the universal service problem. Disagreement exists over scope of the fund, interstate only or both interstate and intrastate, and the method used to determine the size of the fund, with alternatives ranging from a fully distributed cost basis to some form of total service long-run incremental costs (TSLRIC). While most parties agree that universal service should be funded on a competitively neutral basis, alternatives for the funding basis include total revenues, total retail revenues, interstate only revenues, and total revenues - net of payments to other carriers. Support of education and health care is generally supported by the parties, but vast differences exist in the